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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,771	10/23/2003	Joel William Olney	461391/0029	6706

7590 09/20/2005

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New York, NY 10038

EXAMINER

MAI, HUY KIM

ART UNIT	PAPER NUMBER
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2873

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,771

Applicant(s)

OLNEY, JOEL WILLIAM

Examiner

Huy K. Mai

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7-11, 21-28 and 32-37 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 7-11 is/are allowed.
- 6) ☒ Claim(s) 21-28 and 33-37 is/are rejected.
- 7) ☒ Claim(s) 32 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

1. Prosecution on the merits of this application is reopened on claims 21-28,32-37 considered unpatentable for the reasons indicated below:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Schwartz et al.

The Smith reference discloses in figure 1 sunglasses/goggles (see col. 7, lines 15-18 and col. 3, lines 57-60) comprising a frame 20 constructed and adapted to maintain a lens 22 therein; and a sealing member 32 (attached to the frame 20) comprising a “resilient member” deflatable bladder 36 and a “gasket member” foam rubber layer 34 covering the rear surface of the “resilient member” bladder 36 for engaging a person’s skin proximate the eyes (see col. 3, lines 66-68 and col. 4, lines 1-3). However the reference is silent on how the sealing member 32 is attached to the frame and does not state whether or not it is removable.

The Schwartz et al reference teach that goggles which keep water out with an airtight seal (see col. 2, lines 38-44 are advantageously constructed such that the pad is removable in order to replace the pad if damaged in order to save the cost of replacing the entire goggles (see col. 3, lines 17-230. Schwartz et al discloses various means of removably attaching the pad to the frame in figures 4-13 (see col. 6, lines 15-47). Because the eyewear of Schwartz et al. is designed to be

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watertight similar to the eyewear of Smith et al., the eyewear disclosed in the references are considered to be analogous art.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed and adapted the sealing member 32 consisting of the resilient member 36 and the gasket 34 in the sunglasses/goggles of Smith et al. to be removable as taught by Schwartz et al because , as the Smith et al reference is silent on the exact means for attaching the sealing member 32, one of ordinary skill in the art would have been motivated to use any known means such as the removable means disclosed in Schwartz et al. which advantageously allow the sealing member to be replaced if it is damaged as taught by Schwartz et al (see col. 3, lines 17-23).

4. Claim 21-28,33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al in view of Schwartz et al.

Regarding claims 21,33-36, the structure in claims 21,33-36 is similar to that in the above rejected claim 37, the rejection applied to claim 37 would apply to claims 21,33-36 as follows:

The Smith reference discloses in figure 1 sunglasses/goggles (see col. 7, lines 15-18 and col. 3, lines 57-60) comprising a frame 20 constructed and adapted to maintain a lens 22 therein; and a sealing member 32 (attached to the frame 20) comprising a “resilient member” deflatable bladder 36 and a “gasket member” foam rubber layer 34 covering the rear surface of the “resilient member” bladder 36 for engaging a person’s skin proximate the eyes (see col. 3, lines 66-68 and col. 4, lines 1-3). However the reference is silent on how the sealing member 32 is attached to the frame and does not state whether or not it is removable.

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Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed and adapted the sealing member 32 consisting of the resilient member 36 and the gasket 34 in the sunglasses/goggles of Smith et al. to be removable as taught by Schwartz et al because , as the Smith et al reference is silent on the exact means for attaching the sealing member 32, one of ordinary skill in the art would have been motivated to use any known means such as the removable means disclosed in Schwartz et al. which advantageously allow the sealing member to be replaced if it is damaged as taught by Schwartz et al (see col. 3, lines 17-23).

Regarding claims 22-28, Smith et al. and Schwartz et al. do not explicitly state the material of the gasket member as claimed in claims 22-28, however such limitations are well known in the art of spectacles. A person having ordinary skill in the art at the time the invention was made would have found it obvious to made the gasket of Smith in view of Schwartz et al by the various materials as claimed because one material has properties better than another material, it would have been obvious to a person having general skill in this art to select a known material on the

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basis of its suitability for intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

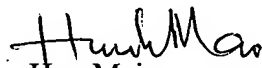
5. Claims 1-3,7-11 are allowed.
6. Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter:
Smith et al and Schwartz et al fails to disclose the limitations “said removable sealing member comprising one or more ventilation opening”. Therefore, these limitations in combination with claimed subject matter could be allowable over the prior art of record.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Y. Epps can be reached on (571) 272-2328. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.


Huy Mai
Primary Examiner
Art Unit 2873

HKM/
August 24, 2005